

WASHINGTON, DC ~~DOCKET FILE~~ COPY ORIGINAL

In the Matter of	)	
	)	
Reallocation of Television Channels	)	ET Docket No. 97-157
60-69, the 746-806 MHz Band	)	

**COMMENTS OF MOUNTAIN BROADCASTING CORPORATION  
ON NOTICE OF PROPOSED RULEMAKING AND  
ITS INITIAL REGULATORY FLEXIBILITY ANALYSIS**

<sup>1</sup>Notice of Proposed Rulemaking in ET Docket No. 97-157, FCC 97-245, released July 10, 1997, 62 Fed. Reg. 41012 (July 31, 1997).

No. 20000 mold  
C-9

Last April, the Commission's Sixth Report and Order in the DTV Proceeding ("Sixth DTV Order") adopted a table of DTV allotments to provide all existing television broadcasters with a second channel, in order to implement DTV service during a specified transition period.<sup>2</sup> By minimizing the use of channels 60 to 69 for DTV service, the Sixth DTV Order intended to facilitate the "early recovery" of this spectrum for public safety, fixed and mobile service, and new broadcast uses.<sup>3</sup> The Commission made clear, however, that "[a]ll existing NTSC and DTV full service broadcast operations on these channels will be fully protected during the transition."<sup>4</sup> The NPRM concludes that, consistent with this plan, "it will be necessary for licensees in the reallocated spectrum to protect both analog and DTV stations in the 746-806 MHz band from interference."<sup>5</sup>

Subsequent to release of the NPRM, Congress passed the Balanced Budget Act of 1997 (the "Budget Act"), which directs the Commission to reallocate and reassign the spectrum now occupied by television channels 60 to 69. Of this spectrum, 24 MHz will be reallocated for public safety use and 36 MHz for commercial uses, including broadcast television, subject to competitive bidding. Assignment of the public safety licenses must

---

<sup>2</sup>Sixth Report and Order in MM Docket No. 87-268, FCC No. 97-115, released April 21, 1997, at Appendix B.

<sup>3</sup>Id. at ¶ 76. Nevertheless, several stations did receive DTV allotments in this band on a transitional basis. Id. at ¶ 84. In addition, many of the over 200 petitions for reconsideration of the Sixth DTV Order request DTV allotments in channels 60 to 69 during the transition. NPRM at ¶ 21.

<sup>4</sup>Sixth DTV Order at ¶ 80 (emphasis added).

<sup>5</sup>NPRM at ¶ 17. Furthermore, any additional DTV allotments made on these channels as a result of petitions for reconsideration of the Sixth DTV Order will also be afforded "full protection" during the transition period. Id. at ¶ 21.

begin by September 30, 1998. Bidding for commercial licenses will begin after January 1, 2001. 47 U.S.C. § 337(a) & (b) (1997). The statute specifically contemplates, however, that these frequencies will continue to be used by existing television broadcast licensees at least until the DTV transition period ends. 47 U.S.C. §§ 309(j)(14); 337(e)(1). Moreover, the Budget Act recognizes that this spectrum may not be available now for public safety uses in heavily congested areas, and thus provides an alternative mechanism for assigning other vacant frequencies for such uses. 47 U.S.C. § 337(c)(1).

The Commission properly concluded that existing television service on channels 60 to 69 should be protected from any interference created by new users of this spectrum -- including new broadcast stations awarded by competitive bidding -- during the DTV transition period. The preservation of existing and established analog service during this time -- for the benefit of both stations and their viewers -- is one of the ultimate goals of the DTV proceeding.<sup>6</sup> Unfortunately, by doubling the number of television assignments in order to implement DTV, while limiting the channels available for DTV use and providing equivalent DTV service protection during the transition period<sup>7</sup>, the Sixth DTV Order's

---

<sup>6</sup>Sixth DTV Order at ¶ 87 (“It is important to protect the existing NTSC service in designing the DTV table so that the public does not lose television service during the transition”).

<sup>7</sup>The Sixth DTV Order attempted to balance interference between both DTV and NTSC service “equally.” Sixth DTV Order at ¶ 87.

Table of Allotments has increased short-spacing among stations and thus has exacerbated interference in congested areas.<sup>8</sup>

Mountain's WMBC now operates on channel 63. WMBC, a minority-owned, independent station, will be particularly hard hit by the new interference created. As Mountain has previously pointed out to the Commission, WMBC will lose 19.0 percent of its existing NTSC viewing area population -- near one in five people -- to new interference during the transition to DTV, representing a loss of more than 1.5 million people.<sup>9</sup>

The Commission must protect existing broadcast service on channels 60 to 69 from significant coverage losses created by DTV assignments during the transition period, just as it plans to protect such broadcasters from interference by new users -- including new analog broadcast stations awarded by competitive bidding. Mountain has advocated that the Commission utilize the "non-core" spectrum, such as channels 60 to 69, as much as possible for DTV during the transition period. Mountain further believes, however, that the use of such channels for DTV should be limited by the need to preserve a certain level of service from existing analog broadcast stations. Thus, no existing station on these channels should be faced with a 19 percent population coverage loss

---

<sup>8</sup>The Association For Maximum Service Television, Inc. has reported that the latest Table of Allotments actually increases total interference over the previous such Table by 26 percent, including a 54 percent increase in interference in the highly congested northeast corridor where Mountain's WMBC is located. Petition For Clarification and Partial Reconsideration of the Fifth and Sixth Reports and Orders Submitted by The Association of Maximum Service Television, Inc., The Broadcasters Caucus and Other Broadcasters, filed June 13, 1997 in MM Docket No. 87-268, at 6-7.

<sup>9</sup>See Sixth DTV Order, Appendix B, Table 1 at B-30.

Mountain also submits the following comments with respect to Appendix C to the NPRM, the Initial Regulatory Flexibility Analysis (“IRFA”) concerning the expected economic impact on small entities. The Regulatory Flexibility Act (“RFA”) was enacted in 1980 to address concerns that small businesses bore a disproportionate share of the burdens of federal regulations.<sup>10</sup> The purpose of the RFA is that “agencies shall endeavor . . . to fit regulatory . . . requirements to the scale of the businesses . . . subject to regulation.”<sup>11</sup> Towards this end, agencies must prepare an IRFA. The Sixth DTV Order’s discussion of significant alternatives to its proposals that would minimize the impact on small entities is limited to the impact on LPTV and TV translator stations.<sup>12</sup> No mention is made of the impact of these policies on small businesses that own full power television stations.

At least judging by WMBC’s own ADI, individual small businesses in the television industry will be severely harmed by the interference and loss of service resulting from the Commission’s attempts to clear channels 60 to 69 as early as possible while providing equivalent interference protection to DTV service during the transition period. As Mountain stated in its comments in the DTV proceeding, small businesses in television broadcasting are

---

<sup>10</sup>Pub. L. No. 96-354, 94 Stat. 1165. The RFA defines the term “small business” to have the same meaning as the term “small business concern” under the Small Business Act, 15 U.S.C. § 632, one which is independently owned and operated, not dominant in its field of operation, and satisfies any additional Small Business Administration (“SBA”) criteria. Under SBA regulations, television broadcasting stations must have no more than a maximum of \$10.5 million in annual receipts in order to qualify. NPRM at Appendix C, p. 44. Although the NPRM was not able to precisely apply this definition in making its estimates, this definition would include WMBC.

<sup>11</sup>Id. at § 2(b).

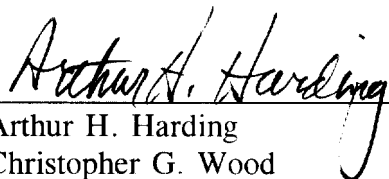
<sup>12</sup>NPRM at Appendix C, p. 48.

likely to be the licensees of struggling independent UHF stations rather than profitable VHF network affiliates. The four stations that would experience the largest interference in the New York ADI during the transition to DTV are all UHF, and independent WMBC on channel 63 would bear the most significant loss of all.<sup>13</sup>

The present proceeding is closely related to the DTV rulemaking, in which the Commission sought to minimize the use of channels 60 to 69. In both proceedings, the Commission recognized the need to protect existing broadcast service from new users. Similarly, existing broadcasters on these channels must be protected from interference by DTV assignments.

Respectfully submitted,

MOUNTAIN BROADCASTING CORPORATION

  
\_\_\_\_\_  
Arthur H. Harding  
Christopher G. Wood

Fleischman and Walsh, L.L.P.  
1400 16th Street, NW, Suite 600  
Washington, DC 20036  
202/939-7900

Its Attorneys

Dated: September 15, 1997

55808

---

<sup>13</sup>See Mountain's Emergency Petition For Reconsideration in MM Docket 87-268, filed June 13, 1997, Exhibit 2-A. In contrast, the largest interference imposed on any VHF station's population in the New York ADI during the transition is only 5.1 percent, a little more than one-quarter the interference imposed on WMBC. Id.

## CERTIFICATE OF SERVICE

I, Eve J. Lehman, a secretary at the law firm of Fleischman and Walsh, L.L.P.  
hereby certify that copies of the foregoing Comments of Mountain Broadcasting Corporation  
were served this 15th day of September 1997, by hand delivery, upon the following:

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, DC 20554

The Honorable Rachelle Chong  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 844  
Washington, DC 20554

The Honorable Susan Ness  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 832  
Washington, DC 20554

The Honorable James H. Quello  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 802  
Washington, DC 20554

Mr. Bruce Franca  
Office of Engineering and Technology  
Federal Communications Commission  
2000 M Street, NW, Suite 480  
Washington, DC 20554

Mr. Alan Stillwell  
Office of Engineering and Technology  
Federal Communications Commission  
2000 M Street, NW, Suite 480  
Washington, DC 20554


Mr. Robert Eckert  
Office of Engineering and Technology  
Technical Research Branch  
Federal Communications Commission  
2000 M Street, NW, Suite 230  
Washington, DC 20554

Ms. Gretchen Rubin  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 544  
Washington, DC 20554

Ms. Mania Baghdadi  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 552  
Washington, DC 20554

Mr. Dan Bring  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 534-A  
Washington, DC 20554

Mr. Gordon Godfrey  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 566  
Washington, DC 20554

  
\_\_\_\_\_  
Eve J. Lehman